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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,099	04/07/2004	Sean Christopher Endler	86605 7114	8955
37123 7590 11/06/2008 FITCH EVEN TABIN & FLANNERY 120 SOUTH LASALLE SUITE 1600 CHICAGO, IL 60603				
EXAMINER				
BEITZ, JACOB F				
ART UNIT		PAPER NUMBER		
2169				
MAIL DATE		DELIVERY MODE		
11/06/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/821,099

Applicant(s)

ENDLER ET AL.

Examiner

Jacob F. B  tit

Art Unit

2169

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 20-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 20-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 August 2008 has been entered.

Remarks

2. In response to communications filed on 18 August 2008, claims 1, 14, 20, 25, 26, and 29 are amended per applicant's request. Claims 1-14 and 20-29 are presently pending in the application.

3. The applicant's amendment fails to follow 37 CFR §1.121 for the following reasons:

Claim 1 has text having both strikethrough and underlining.

Claim 28 has a status identifier of "currently amended" and text that is underlined, however, the text that is underlined was added in the amendment dated 18 December 2007.

4. In an interview on the 4 September 2008, applicant's representative called to point out errors in the amendments and, in response to the examiner's request, stated that a new amendment fixing errors in the amendments would be made. As of the writing of this Office Action, no supplemental amendment has been submitted correcting these issues.

5. In order to avoid delaying prosecution in this case the examiner is assuming that the applicant meant to delete the text that is both strikethrough and underline in claim 1. Further it is

assumed that claim 28 should be labeled “previously presented” and the underlining will be ignored.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-14 and 20-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter (i.e., “wherein the searching is done without using a time or date) which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.
3. Any negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. See *In re Johnson*, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977) (“[the] specification, having described the whole, necessarily described the part remaining.”). See also *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff’d mem.*, 738 F.2d 453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 28 recites the limitation "the at least one non-temporal attribute" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 14 and 20-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In page 8, lines 19-23 of the specification the applicant has provided evidence that the applicant intends the system to be made entirely of software. Software is not one of the four categories of invention and therefore this claim is not statutory. Software is not a series of steps or acts and thus is not a process. Software is not a physical article or object and as such is not a machine or manufacture. Software is not a combination of substances and therefore not a composition of matter.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 26-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Chang (U.S. patent No. 2003/0050982 A1).

As to claim 26, Chang teaches a method comprising:

receiving an event profile comprising at least one attribute relating to an event (see paragraph 0011 and 0015-16);

receiving content and corresponding content description information comprising at least one attribute related to the content (see paragraph 0014); and

associating the content with the event when the at least one attribute related to the event matches the at least one attribute related to the content, wherein the attribute is not a time or a date (see paragraph 0012 and 0015, where "at least one" of the attributes is not related to the content).

As to claim 27, Chang teaches wherein the event comprises multiple participants and the content having been received is transmitted by one of the multiple participants (see paragraph 0023).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-14, 20-25, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (U.S. patent No. 2003/0050982 A1) in view of Ohkubo (U.S. patent No. 2003/0184653 A1).

As to claim 1, Chang teaches a method comprising:

detecting an event (see paragraph 0011, 0014, 0015, and 0017);

searching for an event profile corresponding to the event (see paragraph 0011, 0014, 0015, and 0017, this step is implicit from the);

detecting content transmitted by a participant of the event and description information corresponding to the content (see paragraph 0014); and

associating the content with the event based on the description information and the event profile (see paragraph 0012, 0015, and 0016).

Chang does not distinctly disclose wherein the searching is done without using a time or date.

Ohkubo teaches this, see paragraph 0023 and 0096-0101. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Chang to include the teachings of Ohkubo because these teachings would allow the system to infer event date and time information without the date and time being a part of the original event profile.

As to claim 2, Chang as modified, teaches further comprising matching the description information with the event profile (see Chang, paragraph 0014-0015).

As to claim 3, Chang as modified above, still does not distinctly disclose wherein the event profile includes an event location.

Ohkubo teaches this, see paragraphs 0013-0014. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Chang to include the teachings of Ohkubo because these teachings would allow the images to be identified based on image information.

As to claim 4, Chang as modified, teaches wherein the event profile includes an event time (see Chang, paragraph 0014-0015).

As to claim 5, Chang as modified, teaches wherein the event profile includes an event duration (see Chang, paragraph 0014-0015).

As to claim 6, Chang as modified, teaches wherein the event profile includes a listing of event participants (see Chang, paragraph 0023).

As to claim 7, Chang as modified above, still does not distinctly disclose wherein the description information includes a capture location.

Ohkubo teaches this, see paragraphs 0013-0014. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Chang to include the teachings of Ohkubo because these teachings would allow the images to be identified based on image information.

As to claim 8, Chang as modified, teaches wherein the description information includes a time (see Chang, paragraph 0014-0015).

As to claim 9, Chang as modified, teaches wherein the description information includes an author (see Chang, paragraph 0014-0015).

As to claim 10, Chang as modified, teaches wherein the content is a digital image (see Chang, paragraph 0011).

As to claim 11, Chang as modified, teaches wherein the content is one of a video media, an audio media, a textual media, and a graphical media (see Chang, paragraph 0011).

As to claim 12, Chang as modified, teaches further comprising storing the event profile (see Chang, paragraphs 0016-0017).

As to claim 13, Chang as modified, teaches further comprising storing the description information with the content (see Chang, paragraph 0016).

As to claim 14, Chang teaches a system comprising:

means for detecting an event (see paragraph 0011, 0014, 0015, and 0017);

means for searching for an event profile corresponding to the event (see paragraph 0014 and 0016, where both the user identifier and the time stamp are used in finding the event profile);

means for detecting content relating to the event and transmitted by a participant of the event and description information corresponding to the content (see paragraph 0014); and

means for associating the content with the event based on the description information and the event profile (see paragraph 0012 and 0015).

Chang does not distinctly disclose wherein the means for searching is adapted to search without using a time or a date.

Ohkubo teaches this, see paragraph 0023 and 0096-0101. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Chang to include the teachings of Ohkubo because these teachings would allow the system to infer event date and time information without the date and time being a part of the original event profile.

As to claim 20, Chang teaches a system, comprising:

an interface module to receive content and description information corresponding to the content, wherein the content is relating to an event is captured and transmitted by a participant of the event (see paragraph 0014);

a storage module to store a record containing an event profile describing an event (see paragraph 0011 and 0015-16); and

a content categorization module for matching without using a time or date, the content with the event and the description information (see paragraph 0012 and 0015, “for matching without using a time or date is a statement of intended use and therefore does not hold patentable weight, see MPEP 2106 II. C.).

In the alternative Chang does not distinctly disclose matching without using a time or a date, the content with the event and the description information.

Ohkubo teaches this, see paragraph 0023 and 0096-0101. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Chang to include the teachings of Ohkubo because these teachings would allow the system to infer event date and time information without the date and time being a part of the original event profile.

As to claim 21, Chang as modified, teaches further comprising an event detection module to detect the event (see Chang, paragraph 0011 and 0015).

As to claim 22, Chang as modified, teaches wherein the storage module stores the description information and the content (see Chang, paragraph 0016).

As to claim 23, Chang as modified, teaches further comprising an access control module to selectively allow a user to view the content (see Chang, paragraph 0016).

As to claim 24, Chang as modified, teaches wherein the access control module allows the user to view the content when the user is a participant listed in the event profile associated with the event (see Chang, paragraph 0023).

As to claim 25, Chang teaches a computer-readable medium having computer executable instructions for performing a method comprising:

detecting an event comprising a plurality of participants and storing an event profile (see paragraph 0011 and 0015-16);

receiving content without a time or a date relating to the event from one of the plurality of participants (see paragraph 0014);

receiving a request to access content from a user (see paragraph 0016);

searching for an event profile corresponding to the content (see 0023);

matching the content with the event profile (see paragraph 0014-15); and

displaying the content based on the user and the event profile (see paragraph 0016 and 0023).

Chang does not teach receiving content without a date or a time relating to the event from one of the plurality of participants.

Ohkubo teaches this, see paragraph 0023 and 0096-0101. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have

modified Chang to include the teachings of Ohkubo because these teachings would allow the system to infer event date and time information without the date and time being a part of the original event profile.

As to claim 28, Chang as modified, teaches further comprising:

displaying the content when requested by a participant of the event, wherein the at least one non-temporal attribute related to the event is a list of participants of the event (see Chang, paragraph 0016 and 0022).

As to claim 29, Chang as modified, teaches further comprising:

associating the content with the event when the at least one attribute related to the content and the at least one attribute related to the event match by one of:

an author of the content and a participant of the event (see Chang, paragraph 0014); and
a location of the capturing of the content and a location of the event;

wherein the at least one attribute related to the event comprises at least one of the event location, the event time and date, the event duration and the participant and wherein the at least one attribute related to the content comprises at least one of the author of the content, the time and date of the capturing of the content and the location of the capturing of the content (see Chang, paragraphs 0014-0015).

Response to Arguments

12. Applicant's arguments with respect to claims have been considered but are not deemed persuasive.

In response to the applicant's arguments that "the fact that step 550 is excluded is specifically specified in the Application as filed in introducing FIGS. 5-8 and stating that one or more steps, such as step 550, may be excluded", the arguments have been considered, but are not deemed persuasive. The applicant's limitation of "searching for an event profile corresponding to the event wherein the searching is done without using a time or date" is not step 550 in figure 5. It is figure 520. Deleting this step would delete the search being performed. Further after looking at the specification, neither a positive nor negative recitation of searching without using a time or date can be found in relation to step 520. No alternative embodiments can be found in relation to step 520 either. In fact, it is not clear from the specification what the search criteria are only that the event profile is being searched for.

Further, a "content categorization module" as claimed in claim 20 cannot be seen in any of figures 5-8. Also "for matching without using a time or date, the content with the event and the description information" appears to be statements of intended use. See MPEP 2106 II. C. "Receiving content" with a "time or date" or an alternative is not a block found in any of figures 5-8 and therefore cannot be negatively recited. This is also the case with "associating content with an event".

Therefore, these negative limitations do not have support in the specification as originally filed.

In response to the applicant's arguments directed towards the rejection of claims 1-14, 20-25, 28, and 29 under 35 USC 102, the arguments have been considered, but are moot in view of the new grounds of rejection given above.

In response to the applicant's arguments that Chang does not distinctly disclose "associating the content with the event when the at least one attribute related to the event matches the at least one attribute related to the content, wherein the attribute is not a time or a date", the arguments have been considered, but are not deemed persuasive. The applicant's claim requires that "at least one attribute related to the content is not a time or a date". Paragraph 0012 indicates that the attributes of an event can also include persons listed in a calendar entry. Therefore, Chang teaches this limitation.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob F. Bétit whose telephone number is (571)272-4075. The examiner can normally be reached on Monday through Friday 10:30 am to 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tony Mahmoudi can be reached on (571) 272-4078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Tony Mahmoudi/
Supervisory Patent Examiner, Art Unit
2169

/jfb/
Examiner, Art Unit 2169
29 Oct 2008